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No. 07-24

FILED

OCT 2 6 2007

OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

KARRIS BILAL,

Petitioner,

v.

BP AMERICA, INCORPORATED and JAMES DIETZ,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR REHEARING

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PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44.2, petitioner Karris Bilal respectfully petitions the Court for rehearing of its order denying petitioner's writ of certiorari issued on October 1, 2007.

The grounds for the petition are that the Court did not take into consideration the current, shocking and grossly offensive racist acts being perpetrated upon African-Americans across the United States – including nooses being hung across the country from a tree in Jena, Louisiana, and on the door of a professor at Columbia University – prompting the United States Congress to conduct hearings concerning enacting further legislation to address the many instances of overt racism and unequal treatment under the law relative to African-American citizens. In addition, the Court should grant rehearing to assure the Seventh Circuit's compliance with this Court's recent holding in *Anthony Ash and John Hithon v. Tyson Foods, Inc.*, 546 U.S. ___ (2006). For these compelling reasons, rehearing is warranted and necessary to affirm to those in society who choose to engage in overt, invidious discrimination, that the rule of law has no respect of politics, color, or class – and will be applied impartially to assure that all who engage in such hateful and archaic conduct will be held accountable.

I. THE CURRENT OVERT AND HATEFUL RACIST CLIMATE AND ACTS BEING PERPETRATED THROUGHOUT AMERICA PRESENT THIS COURT WITH A COMPELLING REASON TO GRANT REHEARING AND SQUARELY ADDRESS WHETHER THE COURT WILL TOLERATE OVERT AND HATEFUL RACIST REMARKS AND CONDUCT IN THE WORKPLACE AND SOCIETY

A. There Is An Important And Systemic Problem In Society Relative To Overt, Racist Remarks And Conduct, And The Justice Accorded To African-Americans Victimized By Such Hateful Acts

There is a compelling reason for this Court to grant rehearing, because denying rehearing would send a chilling, spiraling message to society and employers that the Courts will not apply the rule of law to prevent overt and racist remarks and conduct in society, and more importantly, in the workplace. This message would exacerbate racial tensions throughout the country, which will result in a myriad of instances of overt racist remarks and conduct – which will flood the courts with more employment and discrimination lawsuits.

This Court has a critical, important role in squarely addressing the cancer of overt, racist remarks and conduct, which is festering throughout America, as well as in the workplace. As an illustration, on September 20, 2007, a National March against overt racism and hate crimes commenced in

Jena, Louisiana – to protest against nooses being hung from a tree. In West Virginia, the evidence presented revealed that Megan Williams (a twenty year old African-American woman), was subjected to racial epithets like "nigger" repeatedly while being stabbed, beaten, restrained with a noose around her neck, and sexually assaulted by six white individuals. On September 7, 2007, a three-foot noose was hung at the University of Maryland, College. On October 4, 2007, the *Pittsburgh Tribune Review* reported the police were investigating several cases involving nooses being left at workplaces to intimidate black employees in Pittsburgh. Similarly, the *Tribune* also has reported that a supervisor at the Verizon Wireless Business Services Center in Marshall found a black doll with a noose around its neck and racial slurs directed at it. In Long Island, New York, a police found a noose hanging in the locker room – which many believed was hung by a police officer in response to the newly-elected black police chief. In North Carolina, nooses were hung at a public school. On October 3, 2007, in Washington, D.C., white students reportedly held a black student hostage for over an hour and repeatedly wrote "KKK" over his body with markers. Indeed, all over the United States, there are reports of police officers assaulting and killing unarmed black victims. As a result of the foregoing overt racist remarks, conduct, and failure of justice and accountability, a National March on Washington, D.C., will be conducted on November 16, 2007.

Here, in this case, the petitioner has presented evidence that his white manager, in a heated discussion, referred to petitioner as a "boy" and after petitioner informed his manager that he would be reporting him, his manager informed petitioner that if he did so, he would "destroy" petitioner's "black ass" – which petitioner's employer then attempted to cover up by losing or destroying petitioner's employment file. The lower courts turned a blind eye to this direct evidence of intentional discrimination, and granted and affirmed summary judgment, which forced petitioner to seek redress from this Court.

In sum, as boldly stated by President John F. Kennedy – "We are confronted primarily with a moral issue. It is as old as the Scriptures and as clear as the American Constitution. The heart of the question is whether all Americans are to be afforded equal rights and equal opportunities . . . Those who do nothing are inviting shame as well as violence. Those who act boldly are recognizing right as well as reality." See *Why We Can't Wait*, p. 12 (First Signet Classic Printing, January 2000). Accordingly, if the petitioner is indeed entitled to equal rights and equal opportunities under the law, the Court will grant this petition for rehearing, or at least explain why the foregoing does not present an important question for the Court to decide.

II. THE SEVENTH CIRCUIT'S CONFLICTING DECISION PRESENTS THIS COURT WITH A COMPELLING REASON TO EXERCISE ITS SUPERVISORY POWER TO CHECK THE SEVENTH CIRCUIT'S BOLD DEPARTURE FROM THE RULE OF LAW AND THIS COURT'S TEST ESTABLISHED IN *ANTHONY ASH AND JOHN HITHON v. TYSON FOODS, INC.*, 546 U.S. ___ (2006)

A. The Court Should Grant Rehearing To Check The Seventh Circuit's Extreme Departure From This Court's Recent Holding In *Anthony Ash And John Hithon v. Tyson Foods, Inc.*, 546 U.S. ___ (2006)

In *Anthony Ash and John Hithon v. Tyson Foods, Inc.*, 546 U.S. ___ (2006), the Court held that while the use of the term "boy" alone may not by itself always be evidence of discrimination, certain factors must be considered to determine the meaning of the term "boy" – including the context, inflection, tone of voice, local custom, and historical usage. In this case, petitioner testified in his deposition that in a heated discussion his manager referred to him as a "boy," told petitioner that if it were left up to him, he would not hire any of petitioner's kind, and after petitioner informed his manager that he was going to report said racist remarks, he was told by his white manager that if he did so his manager would "destroy" his "black ass." Petitioner's manager claimed in his deposition that he never made any of the foregoing remarks.

Federal Rule of Civil Procedure 56, in relevant part, clearly states that the Court may only enter summary judgment against a party when the pleadings, answers to interrogatories, admissions on file, affidavits, and other evidence submitted to the Court show that "no genuine issue exists as to any material fact, and that the moving party is entitled to judgment as a matter of law." Here, in this case, the Court has direct evidence of intentional discrimination and a record filled with evidence that the employer's three shifting reasons for terminating petitioner's employment were false. See *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133 (2000) (providing that "[A] plaintiff's prima facie case, combined with sufficient evidence that the employer's asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated"). Moreover, both the district court and Seventh Circuit have turned a blind eye to petitioner's direct evidence of discrimination and mounds of evidence in the record that contradict the employer's three asserted, shifting justifications for terminating petitioner's employment. Similarly, and more importantly, the district court and Seventh Circuit did not take into consideration this Court's recent holding in *Anthony Ash and John Hithon v. Tyson Foods, Inc.*, 546 U.S. ___ (2006), since neither court considered, as instructed by this Court, the context, inflection, tone of voice, local custom, and historical usage of the term "boy" – instead, the lower courts simply deemed the usage of the term "boy" and "black ass" to be a so-called "stray remarks" – then summarily dismissed petitioner's

Complaint and awarded the employer thousands of dollars in costs.

B. The Court Should Grant Rehearing To Affirm The Rule Of Law And Exercise Its Supervisory Power Over The Chilling Rulings Being Dealt To Employees In Employment Discrimination Cases By Lower Courts, Which Contradict The Well Established Rule Of Law

Section 703(a)(1) of the 1964 Civil Rights Act, 42 U.S.C. § 2000e-2(a)(1), provides in pertinent part: It shall be an unlawful employment practice for an employer . . . to discriminate against any individual with respect to his . . . terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.

Section 1981 of 42 U.S.C. provides in pertinent part:

> (a) All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts . . . as is enjoyed by white citizens. . . . (b) For the purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms and conditions of the contractual relationship.

The United States Congress enacted an Act "[T]o amend the Civil Rights Act of 1964 to strengthen and

improve Federal civil rights laws, to provide for damages in cases of intentional employment discrimination, to clarify provisions regarding disparate impact actions, and for other purposes." See Civil Rights Act of 1991. More precisely, the United States Congress clearly stated in its findings contained in a SEC. 2, 42 U.S.C. 1981 note, that "(1) additional remedies under Federal law are needed to deter unlawful harassment and intentional discrimination in the workplace; (2) the decision of the Supreme Court in *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989) has weakened the scope and effectiveness of Federal civil rights protections; and (3) legislation is necessary to provide additional protections against unlawful discrimination in employment." In addition, the United States Congress unequivocally stated in a SEC. 3, 42 U.S.C. 1981 note that the purposes of the Act are

> (1) to provide appropriate remedies for intentional discrimination and unlawful harassment in the workplace; (2) to codify the concepts of "business necessity" and "job related" enunciated by the Supreme Court in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), and in the other Supreme Court decisions prior to *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989); (3) to confirm statutory authority and provide statutory guidelines for the adjudication of disparate impact suits under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); and (4) to respond to recent decisions of the Supreme Court by expanding the scope of

relevant civil rights statutes in order to provide adequate protection to victims of discrimination.

Here, in the case at bar, petitioner has filed a Complaint in the district court under the Civil Rights Act of 1964, as amended by the Civil Rights Acts of 1991, 42 U.S.C. §§ 2000e et seq., and the Reconstruction-era Civil Rights Act, 42 U.S.C. § 1981, for the redress of unlawful employment discrimination by his employer and manager because of petitioner's race. More precisely, petitioner's white manager referred to petitioner as a "boy," informed petitioner that if he had his way, he would not hire any African-Americans, and then after petitioner informed his manager that he was going to report him for making these racist remarks, he was then told by his manager that if he did so, the white manager would "destroy" his "black ass." The lower courts have framed the foregoing racist statements as "stray remarks" and turned a blind eye to other evidence of unlawful employment discrimination, to grant summary judgment and thousands of dollars in costs to the respondents. On October 1, 2007, this Court denied petitioner's writ of certiorari.

With all due respect, it is simply useless to have employment and discrimination laws enacted by the United States Congress if the lower courts refuse to apply the rule of law, and this Court essentially sanctions this conduct by denying petitioner's writ of certiorari and declining to summarily reverse the lower courts. Moreover, the Court should grant rehearing because it is patently obvious that the lower

courts have significantly departed from their duty to apply the rule of law neutrally and impartially. As Dr. Martin Luther King, Jr. wrote while being held in a Birmingham jail – "injustice anywhere is a threat to justice everywhere." Indeed, the currency and credibility of the judicial system depend upon the lower courts and this Court impartially applying the rule of law and exercising judicial restraint.

CONCLUSION

For all of the foregoing reasons, the Court should grant this petition for rehearing. The Court may also wish to consider summary reversal.

Respectfully submitted,

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Dated: October 26, 2007

CERTIFICATION

I hereby certify that this Petition for Rehearing is submitted in good faith and not for delay. This Petition for Rehearing is restricted to the grounds set out in Rule 44.2.

Karris Bilal